

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)	
)	
Amendment of 47 C.F.R. Section 73.202(b),)	MM Docket No. _____
FM Table of Allotments)	RM-- _____
(Glen Arbor, Michigan))	
)	
To: The Chief, Allocations Branch)	
Policy and Rules Division)	
Mass Media Bureau)	

Opposition to Petition for Rulemaking to Delete FM Channel

George S. Flinn, Jr. ("Flinn"), by his attorney, hereby respectfully submits his Opposition to the "Petition for Rulemaking to Delete FM Channel" filed by WKJF Radio, Inc. ("WKJF") on April 24, 2000 with respect to the above-referenced the Channel 227A FM allocation at Glen Arbor, Michigan. Specifically, Flinn respectfully incorporates herein by reference his "Opposition to Motion to Dismiss" filed by in connection with WKJF's related pleading (i.e., captioned "Motion to Dismiss"). A copy of Flinn's 'Opposition to Motion to Dismiss' is enclosed herewith as Attachment A.


Succinctly stated, the Channel 227A allotment at Glen Arbor, Michigan is anything but a "defective" allotment. The deletion of Channel 227A at Glen Arbor, Michigan simply to accommodate a permissive transmitter site change by WKJF is legally and equitably inappropriate.

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Wherefore, based on the foregoing, it is respectfully requested that the Petition for Rulemaking to Delete FM Channel filed by WKJF Radio, Inc. on April 24, 2000 be denied.

Respectfully submitted,

George S. Flinn, Jr.

By: 
Stephen C. Simpson
His Attorney

1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005
(202) 408-7035

ATTACHMENT A

COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
George S. Flinn, Jr.) FCC File No. BPH-970724M4
)
For Construction Permit on Channel 227A)
Glen Arbor, Michigan)
)
To: The Chief, Mass Media Bureau)

Opposition to Motion to Dismiss Application

George S. Flinn, Jr. ("Flinn"), by his attorney, hereby respectfully submits his Opposition to the "Motion to Dismiss Application" filed by WKJF Radio, Inc. ("WKJF") on April 24, 2000 with respect to the above-referenced FCC Form 301 application. In support thereof, the following is shown:

A. Background

1. As the Commission's records will reflect, Flinn is the sole applicant for authority to construct a new commercial FM station on Channel 227A at Glen Arbor, Michigan. Flinn is currently awaiting FAA approval for the proposed tower referenced in the applicant's December 18, 1998 amendment to the above-referenced application (i.e., an amendment which was submitted in response to the FCC's staff letter of November 19, 1998).

2. On April 24, 2000, WKJF filed the subject "Motion to Dismiss Application" (hereinafter "Motion") seeking the dismissal of Flinn's application. WKJF's Motion was

filed over eighteen months after the cut-off date for petitions to deny established in the FCC's Report Number NA-227A, released September 25, 1998.

3. Also on April 24, 2000, WKJF filed a "Petition for Rulemaking to Delete FM Channel" (hereinafter "Petition") seeking the deletion of the allocation of Channel 227A at Glen Arbor, Michigan.

4. As reflected in WKJF's Petition, the sole basis for WKJF's grossly tardy desire to prevent the establishment by Flinn of a new FM service to Glen Arbor, Michigan is the simple fact that Flinn's proposed Glen Arbor station conflicts with a preferred transmitter site to which WKJF (FM) desires to relocate. In short, WKJF seeks the dismissal of Flinn's long-pending application and the complete deletion of the 227A allotment at Glen Arbor, Michigan in order to satisfy its own commercial goals. As will be discussed further herein, WKJF's short-sited and wholly self-serving preference for a new site is hardly justification for the draconian dismissal of Flinn's application and the deletion of a new FM service in Glen Arbor, Michigan.

B. Flinn had Reasonable Assurance of Site Availability

5. WKJF's main argument for denial of Flinn's Glen Arbor, Michigan application is its erroneous conclusion that Flinn did not have reasonable assurance of site availability with respect to his original application filed on July 24, 1997. The sole basis for such a conclusion is an Informal Objection filed by Ivan D. Miller of the United States Park Service on December 18, 1997 (i.e., a brief letter apparently faxed to the FCC but never served on the applicant or his Counsel). A copy of the letter in question is

attached to WKJF's Motion as Exhibit A. WKJF's subjective assessment that Flinn "had absolutely no expectation whatsoever that he could use any piece of land within the Lakeshore for a transmitter site" is contradicted by the very language of the letter it cites in "support" of its subjective proposition. Ivan D. Miller's own letter expresses an admission that Flinn's representative, D.C. Williams, was specifically told by the Assistant Superintendent of the National Park Service (i.e., Duane Pearson) that an application could be filed by Flinn seeking authority to locate his transmitter site within the specified area and that the National Park Service would be legally required to process it. The enclosed declaration of D.C. Williams (i.e., Attachment A hereto) delineates in detail the factual basis Flinn had for certifying that he had reasonable assurance with respect to the originally proposed transmitter site.

6. On November 19, 1998, the Commission sent Flinn a letter requesting that he amend his above-referenced application in the face of the internal departmental conflict at the National Park Service and the general reticence evidenced in Ivan D. Miller's Informal Objection of December 18, 1997. Rather than engage in a protracted administrative battle with the National Park Service and in order to expedite processing of the above-referenced application, Flinn amended his proposal on December 18, 1998 to specify a transmitter site outside of the National Park Service land. Again, as noted above, Flinn is awaiting FAA approval for the amended proposal.

C. Flinn's Proposal Provides the Requisite Principal Community Coverage

7. As noted in the enclosed Engineering Statement of D.C. Williams (i.e., Flinn's Consulting Engineer), WKJF's assertion that Flinn's proposal (i.e., as amended on December 18, 1998) does not provide the requisite coverage to at least 80% of Glen Arbor, Michigan is simply incorrect. As demonstrated in the technical showing enclosed herewith in conjunction with Attachment A, Flinn's proposal provides 70 dBu service to 89.6% of the town of Glen Arbor (i.e., well in excess of the 80% minimum threshold established by the Commission).

D. Flinn's Proposal is Not Short-Spaced

8. Similarly, as noted in the enclosed Engineering Statement of D.C. Williams, Flinn's Consulting Engineer, WKJF's assertion that Flinn's proposal (i.e., as amended on December 18, 1998) is impermissibly short-spaced to WKJF and WBCM is also incorrect.

E. Conclusion

WKJF, an entity which has made no demonstration whatsoever that it is a party to which standing should be conferred, has filed a Motion to Dismiss which is both grossly untimely and factually incorrect.¹ As noted hereinabove, WKJF seeks the dismissal of Flinn's long-pending application and the complete deletion of the 227A


¹ Notwithstanding how the subject pleading is captioned, WFJK's "Motion to Dismiss" is actually an untimely "Petition to Enlarge Issues".

allotment at Glen Arbor, Michigan in order to satisfy its own commercial goals (i.e., Flinn's proposed Glen Arbor station conflicts with a preferred transmitter site to which WKJF ([FM] desires to relocate). WFJK's assertion that Flinn lacked reasonable assurance of its originally-proposed transmitter site is rebutted not only by the sworn Declaration of Flinn's representative responsible for securing the site but also by the very "evidence" submitted in WFJK's Motion (i.e., the letter of Ivan D. Miller). The technical arguments advanced by WFJK regarding "flaws" in Flinn's application are equally unpersuasive.

Wherefore, based on the foregoing, it is respectfully requested that the Motion to Dismiss Application filed by WKJF Radio, Inc. on April 24, 2000 be denied.

Respectfully submitted,

George S. Flinn, Jr.

By: 
Stephen C. Simpson
His Attorney

1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005
(202) 408-7035

ATTACHMENT A

FAX COPY (ORIGINALS TO BE SUPPLIED AS SUPPLEMENT)

EXHIBIT "ENG"

ENGINEERING EXHIBITS IN SUPPORT OF RESPONSE TO MOTION TO DISMISS APPLICATION

PENDING APPLICATION FOR FM
CONSTRUCTION PERMIT
BPH-970724M4

Channel 227A at
Glen Arbor, Michigan

Prepared for
George S. Flinn, Jr.
May, 2000

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ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER

This Engineering Statement is prepared on behalf of George S. Flinn, Jr. in support of the pending application for new FM station on Channel 227A at Glen Arbor, Michigan (BPH-970724M4). I am the consulting engineer for Flinn and was responsible for the preparation and execution of the engineering exhibits which accompanied said application. I have more than twenty years of experience in matters before the Federal Communications Commission as a licensee, applicant, and as a consulting engineer on behalf of clients. I am intimately familiar with Commission application requirements and procedures, especially those pertaining to technical matters.

In its "Motion To Dismiss Application", WKJF Radio, Inc. ("WKJF") makes certain assertions regarding various technical aspects of Flinn's application at Glen Arbor which it casts as "factual statement(s)", several of which are completely unsupported by any corroborating material. In reality, these statements are factually incorrect and/or misleading and will be addressed in the order raised in the said motion.

Reasonable Assurance Of Site Availability

Contrary to the representations offered in the motion, Flinn clearly had reasonable assurance of site availability for the transmitter site proposed in the original application. On July 21, 1997, I personally spoke with Mr. Duane Pearson of the Leelanau Ranger Station office of the Sleeping Bear Dunes National Lakeshore ("SBDNL") by telephone. I discussed the possibility of constructing a small antenna structure within the SBDNL at length with Mr. Pearson. I correctly characterized the antenna structure contemplated for the proposed facility as a short (36 foot tall) self-supporting pole rather than a tower, and I explained that the applicant would be willing to take whatever reasonable steps may be necessary, desirable, and permissible to mitigate the visual impact of the structure. Mr. Pearson recounted his knowledge of another recent tower proposal which failed to receive the necessary approvals due to the proponent's failure to adequately address various concerns. He was not specific as to the nature of the shortcomings. Being intimately familiar with the vagaries of obtaining approval for the construction of new antenna structures, I explained to him that the applicant was aware that many issues would need to be addressed and satisfied before we could expect to receive approval. Mr. Pearson confirmed that the application required for this purpose would undergo a lengthy review process and that approval at any site was far from a certainty, but that the process necessary to obtain such approval could not begin until the appropriate application had been filed with his office. He also explained that some sites within the SBDNL potentially have some flexibility for this purpose but could not elaborate on which sites might fall into this category.

ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 2)

While he certainly did not convey any manner of approval, he explicitly stated that the chances for rejection were not absolute. In response to my direct question, Mr. Pearson explained that his office would review and evaluate any proposal based on its own merits and would afford the applicant full opportunity to prosecute its application and address any concerns which may be potentially disqualifying. Based on this conversation and Mr. Pearson's assurances that an application filed by Flinn would receive fair consideration and not be denied out-of-hand, I concluded that the site was reasonably available for the intended purpose.

In his letter of December 18, 1997, Mr. Ivan D. Miller, Superintendent of the SBDNL, makes several statements which may seem to contradict but, upon examination, do not conflict with the representations made to me by Mr. Pearson, the Assistant Superintendent with whom I spoke. Other statements in his letter indicate that he may have received incorrect, incomplete, or misleading information regarding my conversation with Mr. Pearson from another source. At no time did the undersigned misconstrue or misrepresent Mr. Pearson's statements to the effect that "a transmitter antenna would be allowed" in the SBDNL. To the contrary, Mr. Pearson was careful to advise me that he did not know whether any proposed structure would or would not be allowed and that such determination could only be reached upon consideration of a formal application to be filed. His advice to me that such an application could be filed with his office is confirmed in Mr. Miller's letter. At no time did Mr. Pearson advise me that "commercial use of these federal property (sic) is not allowed" or that "the National Park Service would be opposed to any such construction". Instead, Mr. Pearson advised me that there were some sites within the SBDNL that may potentially offer some flexibility for the location of the type of structure we were proposing (which is not, and was never represented as, an "FM tower" as stated in Mr. Miller's letter). There are many commercial ventures located on some of the most highly protected and controlled properties under the jurisdiction of the National Park Service. Lacking specific knowledge of the facility and proposed use prior to affording the opportunity for an applicant to prosecute a filing deemed permissible by the SBDNL Superintendent is inconsistent with the prior representations made to me by Mr. Pearson.

In response to the specific request of the Commission and to expedite the processing of its application, the applicant amended its proposal to specify a transmitter site outside of the SBDNL. This did not alter the applicant's understanding that it had obtained reasonable assurance of site availability for its original site.

ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 3)**FAA Determination**

The applicant has previously filed FCC Form 7460 with the FAA seeking a determination of no hazard for its amended proposal but has not yet received affirmation of such determination. A duplicate filing has been submitted with a request for expedited processing, and the Commission will be notified as soon as a determination has been issued.

Principal Community Coverage

Due to the presence of significant water and various allocation limitations, the permissible area within which the proposed site may be located is quite limited. If an expedient site is to be selected outside of the SBDNL which also meets applicable allocation criteria, the presence of some hilly terrain between the site and the town of Glen Arbor is unavoidable. In an attempt to demonstrate that the proposal fails to adequately cover its proposed principal community, WKJF offers only a single terrain profile graph and a mysterious representation of the proposed 70 dBu contour with no explanation as to its derivation.

The vertical and horizontal scaling of the single radial profiled is so exaggerated that it almost certainly conveys a misleading impression of the terrain variation over the path from the proposed site to a single point in the eastern portion of the unincorporated town of Glen Arbor. The vertical scale was expanded to be approximately 14 times larger than the horizontal scale, and when combined with the minimum elevation value selected for the ordinate axis, this causes the terrain to visually appear to be approximately nine times higher than it actually is. In reality, the difference in elevation between the proposed center of radiation and the highest point of the intervening terrain is only approximately 47 meters. This elevation difference is really only 0.4% (four thousandths) of the total plotted horizontal distance.

While visual misinterpretation of this graph is likely, the numerical analysis obtained from the data used to plot the graph is also flawed. The Commission's F(50,50) contour calculation methodology is based on a receive antenna height of 9 meters above ground level (47 CFR 73.333), yet the receive antenna elevation selected in this analysis is directly on the ground. This serves to accentuate the diffraction loss experienced at this azimuth and yields an inaccurate calculation of the proposed 70 dBu contour (if, in fact, this single radial was used by WKJF to calculate the proposed 70 dBu contour).

ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 4)

The exhibits appended to the motion contain no explanation of the basis for the proposed 70 dBu contour depicted as their "Exhibit E". 47 CFR 73.313(e) requires that alternate contour prediction methodologies be supported by a description of the method employed. Standard Commission filing requirements also demand of applicants a tabulation of the data used to project service and interference contours. Absent these supporting data, the applicant and the Commission have no basis for analysis and comment on said contour.

The town of Glen Arbor specified as the applicant's community of license must be distinguished from whole of Glen Arbor Township, which includes the SBDNL, two large bodies of water, and the population center of Glen Haven. The boundaries of the unincorporated town of Glen Arbor were determined to be that land area within Glen Arbor Township contiguous to the established business and residential district of Glen Arbor, excluding land area within the SBDNL administered by and under the control of the National Park Service. To demonstrate adequate coverage of the town of Glen Arbor, a comprehensive calculation of the proposed 70 dBu service area was performed with digitized elevation samples at 0.1 km spacings along radials at 0.25° increments in the sector of interest using the free space propagation model incorporating additional obstacle diffraction loss where applicable. This method is often referred to as the "Rice-Longley Model"; see P.L. Rice et al, "Transmission Loss Predictions For Tropospheric Communication Circuits, Volume II, Annex II Section II.2 and Annex III Section III.2, U.S. Department of Commerce, revised 1967 for a full description of the methodology.

As demonstrated in the appended exhibit, the proposal provides 70 dBu service to 89.6% of the town of Glen Arbor, well in excess of the current Commission principal community coverage requirement of 80%.

Allocation Matters

WKJF also claims that the proposal "is shortspaced to both WKJF-FM and WBCM(FM)" and that "under Section 73.215 of the Rules, (the proposed) station would be eligible for a maximum power of 5.9 kilowatts". This assertion is also factually incorrect. As presented in the engineering exhibits filed in support of the site change amendment, the applicant correctly disclosed that the proposal is in fact shortspaced to WKJF-FM and requested processing pursuant to 47 CFR 73.215 on page 3 of Section V-B, FCC Form 301. Exhibits which accompanied the amendment clearly demonstrated the absence of impermissible overlap between the proposal and the licensed facilities of WKJF-FM as prescribed by the provisions of said rule section.

ENGINEERING STATEMENT OF D.C. WILLIAMS, Ph.D., P.E., CONSULTING ENGINEER (Page 5)

The licensed operation of WKJF-FM is presently shortspaced to the licensed facilities of WTCM-FM, Channel 278C at Traverse City, MI and to several pending applications at New Holstein, WI on Channel 225A. It is not clear that WKJF-FM would be entitled to receive contour protection to the extent of its hypothetical maximum facilities, but to completely dispel any notions regarding the acceptability of Flinn's proposal at Glen Arbor, the appended exhibits demonstrate that the proposal still provides the requisite protection to WKJF-FM even with the latter operating at maximum Class C facilities (100 kW ERP at a class reference HAAT of 600 meters). Actually achieving such facilities would require WKJF-FM to increase their present antenna height by 289 meters (948 feet). The shortspacing to WKJF-FM is fully permissible given the absence of impermissible overlap and complies with all applicable Commission standards of allocation.

WKJF also claims that the proposed facility at Glen Arbor is shortspaced to WBCM(FM), Channel 228C2 at Boyne City, MI. Once again, this bizarre statement is also factually incorrect. The required spacing between first adjacent Class A and C2 stations is 106 km, and the actual spacing between the respective sites in this case is 108.7 km. With 2.7 km of clearance, full compliance with the spacing requirements to WBCM(FM) is easily achieved. "Exhibit E-2" from WKJF's own motion seems to depict that the proposed Glen Arbor site lies well beyond the 106 km arc from WBCM(FM).

Respectfully submitted,

COPY

D.C. Williams, Ph.D., P.E.
Consulting Engineer
May 5, 1999

P.O. Box 1888
Carson City, NV 89702
(775) 885-2400

CERTIFICATION OF ENGINEER

I HEREBY CERTIFY:

that I am a Registered Professional Engineer, a full member of the Association of Federal Communications Consulting Engineers, and an experienced Consulting and Forensic Engineer whose qualifications and previous works are a matter of record with the Federal Communications Commission in Washington, D.C.;

that I hold the degrees of Bachelor of Science in Physics, Master of Science in Electrical Engineering, and Doctor of Philosophy in Electrical Engineering, all awarded by The University of Nevada;

that I have been retained by George S. Flinn, Jr. to prepare the instant engineering exhibits;

that same has been prepared by me or under my immediate supervision;

and that, under penalty of perjury, all representations contained herein are true and correct to the best of my knowledge and belief.

EXECUTED ON THIS 5th DAY OF MAY, 2000

COPY

D.C. Williams, Ph.D., P.E.
Consulting Engineer

GEORGE S. FLINN, JR.

BPH-970724M4 AT GLEN ARBOR, MICHIGAN

MAY 2000

TABULATION OF ALLOCATION CONTOURS**WKJF-FM, Cadillac, MI Channel 225C****Assumed hypothetical maximum Class C facilities at present site****Licensed: 100 kW ERP at 311 m AAT, Center of radiation = 707 m AMSL****Assumed: 100 kW ERP at 600 m AAT, Center of radiation = 996 m AMSL**

AZ (degs)	HAAT (m)	ERP (kW)	CONTOUR DIST. (km) 60.0 dBu F(50,50)
280.0	609	100.0000	92.1
285.0	609	100.0000	92.1
290.0	605	100.0000	91.9
295.0	604	100.0000	91.9
300.0	595	100.0000	91.5
305.0	585	100.0000	91.0
310.0	580	100.0000	90.8
315.0	582	100.0000	90.9
320.0	583	100.0000	90.9
325.0	582	100.0000	90.9
330.0	580	100.0000	90.8
335.0	575	100.0000	90.6
340.0	571	100.0000	90.4
345.0	568	100.0000	90.2
350.0	563	100.0000	90.0
355.0	562	100.0000	89.9



D.C. WILLIAMS, Ph.D., P.E.



CONSULTING RADIO ENGINEER



CARSON CITY, NEVADA



GEORGE S. FLINN, JR.

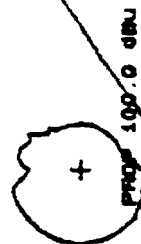
BPH-970724M4 AT GLEN ARBOR, MICHIGAN

MAY 2000

TABULATION OF PROPOSED INTERFERENCE CONTOUR

AZ (degs)	HAAT (m)	ERP (kW)	CONTOUR DIST. (km) 100.0 dBu F(50,10)
90.0	-22	6.0000	1.6
95.0	-15	6.0000	1.6
100.0	-11	6.0000	1.6
105.0	-10	6.0000	1.6
110.0	-9	6.0000	1.6
115.0	-4	6.0000	1.6
120.0	-4	6.0000	1.6
125.0	-5	6.0000	1.6
130.0	-6	6.0000	1.6
135.0	-6	6.0000	1.6
140.0	-7	6.0000	1.6
145.0	-2	6.0000	1.6
150.0	4	6.0000	1.6
155.0	10	6.0000	1.6
160.0	15	6.0000	1.6
165.0	19	6.0000	1.6
170.0	36	6.0000	1.7
175.0	46	6.0000	2.0
180.0	58	6.0000	2.2
185.0	66	6.0000	2.3
190.0	66	6.0000	2.3
195.0	65	6.0000	2.3
200.0	68	6.0000	2.3
205.0	73	6.0000	2.4
210.0	74	6.0000	2.4
215.0	75	6.0000	2.4
220.0	78	6.0000	2.5
225.0	79	6.0000	2.5
230.0	80	6.0000	2.5
235.0	80	6.0000	2.5
240.0	80	6.0000	2.5

+N 45 0 0
+U 00 0 0



WLF-PM 80.0 dBu

Transverse Mercator

KILOMETERS

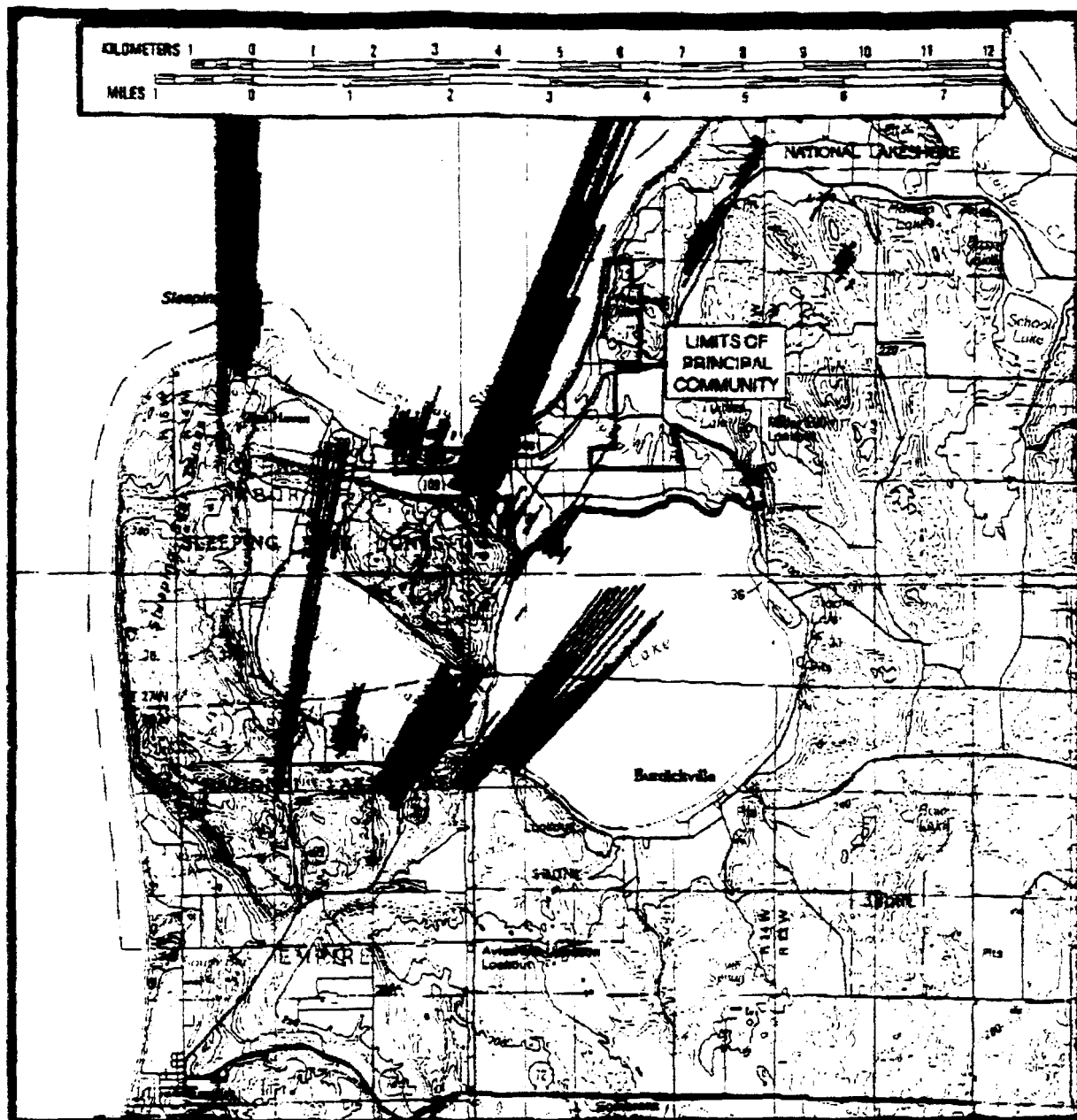


D.C. Williams, Ph.D., P.E.
Consulting Radio Engineer
Carson City, Nevada

ALLOCATION CONDITIONS

Prop. 227A at Glen Arbor, MI

May, 2000



GEORGE S. FLINN, Jr.

Application for Construction Permit

FM Channel 227A at Glen Arbor, Michigan

May, 2000

CALCULATION OF 70 dBu SERVICE TO PRINCIPAL COMMUNITY

Rice-Longley computation model, including obstacle diffraction loss. Terrain elevations at 0.1 km increments, radials at 0.25° increments. Effective radiated power = 9.93 dBk (isotropic source reference). Transmit antenna radiation center = 257 meters AMSL, receive antenna elevation = 9 m AGL. Unfilled areas indicate received signal of 70 dBu or greater. Filled areas represent received signal less than 70 dBu

TOTAL AREA WITHIN BOUNDARIES OF GLEN ARBOR = 7.42 sq. km

AREA RECEIVING 70 dBu SERVICE OR GREATER = 6.65 sq. km

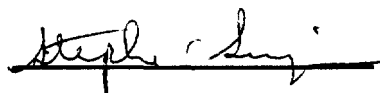
70 dBu COVERAGE OF PROPOSED PRINCIPAL COMMUNITY = 89.6%

◆ D.C. WILLIAMS, Ph.D., P.E. ◆ CONSULTING RADIO ENGINEER ◆ CARSON CITY, NEVADA ◆

Certificate of Service

I hereby certify that a copy of the foregoing document was this 9th day of May, 2000 sent by First Class U.S. mail, postage prepaid, to the following:

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P.O. Office Box 6648
Annapolis, MD 21401

A handwritten signature in cursive script, appearing to read "Stephen J. Kelly", is written over a horizontal line.

Certificate of Service

I hereby certify that a copy of the foregoing document was this 9th day of May, 2000 sent by First Class U.S. mail, postage prepaid, to the following:

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P.O. Office Box 6648
Annapolis, MD 21401

Stephen C. Simpson